

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

CASE NO: 8:20-cr-138-CEH-JSS

JHONIS ALEXIS LANDAZURI
ARBOLEDA, LUIS ELIAS
ANGULO LEONES and
DILSON DANIEL ARBOLEDA
QUINONES

ORDER

This matter comes before the Court following a status conference held September 2, 2021. At the status conference, the Court discussed with counsel the upcoming jury trial of this case, which is specially set to commence September 13, 2021, and the possibility that the case may need to be continued for the safety of the parties, their lawyers, the jurors, court personnel, and the Court, due to the increased positivity rate of Coronavirus infections due to the delta variant in the Middle District of Florida. Upon careful consideration, the Court has determined the trial of this matter will be continued.

In March of 2020, the World Health Organization declared a global pandemic due to the Coronavirus disease, known as COVID-19. Notwithstanding, the Court has continued to operate to the best of its ability adapting to the ever-changing situation. The United States District Court for the Middle District of Florida has retained an epidemiologist to provide advice and guidance to the Court regarding the virus, its

spread, SARS-CoV-2 variants, and protocols pertaining to public access to the courthouses and other matters. In January 2021, the epidemiologist expert recommended that, other than court personnel, the Court should significantly limit the general public entering the courthouses of the Middle District of Florida until March 1, 2021. Based on this information, the COVID Committee (comprised of seven Judges from the Middle District of Florida) unanimously recommended that no jury trials be held in the first quarter of 2021 and that in-person proceedings be minimized to every extent possible. Jury trials resumed in April 2021 as positivity rates decreased and vaccines became more readily available to members of the community. However, in the summer of 2021, the delta variant of the Coronavirus caused a significant increase in positivity rates, even among those vaccinated. On August 3, 2021, the COVID Committee, following the recommendation of the epidemiologist, unanimously recommended that the Middle District of Florida pause jury trials until the positivity rates get better. This decline in positive cases has not yet occurred.

The Tampa Division of the Middle District of Florida draws jurors from the following counties: Hardee, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota. According to the CDC's website, the community transmission rate in all these counties is "high" with the following 7-day¹ cases and positivity percentage:

Hardee	28.79%	358 cases
Hernando	18.94%	1,314
Hillsborough	17.68%	9,800

¹ Current 7-days is Sat Aug 28 2021 - Fri Sep 03 2021 for case rate and Thu Aug 26 2021 - Wed Sep 01 2021 for percent positivity. <https://covid.cdc.gov/covid-data-tracker/#county-view> (last accessed September 7, 2021).

Manatee	14.11%	3,066
Pasco	18.78%	3,821
Pinellas	17.04%	5,696
Polk	22.58%	6,192
Sarasota	17.96%	2,867

These rates exceed the positivity rates that existed at the height of the pandemic in 2020.

This is a criminal action that involves three Defendants, each of whom will require an interpreter at the trial. Given the anticipated number of people in the courtroom, including a panel of prospective jurors, three Defendants, their three lawyers, three interpreters, multiple U.S. Marshals, the Government’s counsel, the court security officers, court personnel, and the undersigned judge, the Court has determined that continuation of the trial of this matter is the prudent course of action, taking into consideration the safety and well-being of all concerned. It would be extremely challenging, if not impossible, to safely socially distance in the courtroom.²

As of September 4, 2021, there has been a total of 39,831,318 people infected by COVID-19 in the United States, with 1,052,210 cases in the past seven days. A total of 644,848 individuals have died from COVID-19 since January 21, 2020. See https://covid.cdc.gov/covid-data-tracker/#cases_totalcases (last accessed September 7, 2021). The Court does not take this disease lightly, nor its devastating impact on this country and the world. Indeed, “a multitude of courts across the nation have

² The Court has reserved courtroom 17 for this trial, as it is the largest courtroom in the Tampa Division. Even so, the number of people required for this multi-defendant trial, most likely, cannot be socially distanced at the provided tables.

recognized, the Speedy Trial Act permits . . . exclusions of time in light of the serious health risks posed by conducting a jury trial during a pandemic.” *United States v. McRae*, No. CR 119-125, 2021 WL 359258, at *2 (S.D. Ga. Jan. 19, 2021), report and recommendation adopted, No. CR 119-125, 2021 WL 354423 (S.D. Ga. Feb. 2, 2021) (citing *United States v. Shaner*, No. 3:18-CR-35, 2020 WL 6700954, at *6 (M.D. Pa. Nov. 13, 2020) (concluding trial continuances due to COVID-19 pandemic do not violate Speedy Trial Act); *United States v. Tapp*, No. CR 19-35, 2020 WL 6483141, at *2 (E.D. La. Nov. 4, 2020) (same); *United States v. Reese*, No. 19-CR-0149 (WMW/KMM), 2020 WL 5097041, at *3 (D. Minn. Aug. 28, 2020) (same); *United States v. Pond*, No. 18-50106-JLV, 2020 WL 3446677, at *2 (D.S.D. June 24, 2020) (same); *United States v. Merrick*, No. 20-CR-09-JD, 2020 WL 3887779, at *3-4 (D.N.H. July 8, 2020) (same)).

In addition to delay of the trial caused by the coronavirus pandemic, the Court notes that this case is not ready for trial. A cursory review of the docket reveals that much of the delay in this case is attributable to the many pre-trial motions filed by Defendants, in particular Defendant Dilson Daniel Arboleda Quinones. Indeed, there is currently pending before the Court a Report and Recommendation (Doc. 269) on Defendant Dilson Daniel Arboleda Quinones’s Second Motion to Suppress, issued by the Magistrate Judge on August 16, 2021. The Government filed an objection to the Report and Recommendation on August 30, 2021 (Doc. 277). Defendants’ deadline to respond to the objection is September 13, 2021. Moreover, issues have arisen

regarding the necessity and availability of Coast Guard witnesses for trial. *See* Docs. 276, 291, 295.

For the reasons stated in this Order and as discussed at the hearing on September 2, 2021, the Court finds that the ends of justice served by continuing the trial of this case outweigh the best interests of the public and the Defendants in a speedy trial. The Court, therefore, determines that the time from today until the end of the October 2021 trial term shall be “excludable time” pursuant to 18 U.S.C. § 3161(h).

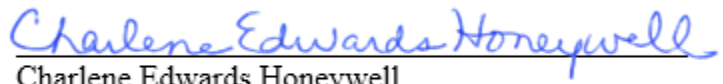
Accordingly, it is

ORDERED

The trial of this case, scheduled to commence September 13, 2021, is continued. The trial is rescheduled to commence during the Court’s October Trial Term, specifically October 18, 2021³. Given the fluid nature of the coronavirus pandemic, a status conference will be scheduled to further discuss the rescheduling of this trial. The Court has reserved courtroom 17 on the following dates for jury trials: October 12, 2021; October 18, 2021; November 29, 2021; December 6, 2021; January 10, 2022; and February 7, and 21, 2022.

³ The Government has filed a notice indicating that all essential government witnesses are available for trial the week of October 4 – 8, 2021 (Doc. 276). Courtroom 17 is not currently available the week of October 4th, as another judge is scheduled for trial in that courtroom that week. The Court has requested to be listed as a back-up trial for the week of October 4, 2021.

DONE and **ORDERED** in Tampa, Florida on September 7, 2021.



Charlene Edwards Honeywell
United States District Judge

Copies furnished to:
Counsel of Record
Unrepresented Parties, if any